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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XV136

Atlantic Coastal Fisheries Cooperative Management Act Provisions; Atlantic Menhaden Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of withdrawal of federal moratorium.

SUMMARY: NMFS announces the withdrawal of the Federal moratorium on fishing for Atlantic menhaden in the waters of the Commonwealth of Virginia. NMFS withdraws the moratorium, as required by the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act), based on its determination that Virginia is now in compliance with the Atlantic States Marine Fisheries Commission's (Commission) Interstate Fishery Management Plan for Atlantic Menhaden.

DATES: *[insert date of publication in the Federal Register]*.

ADDRESSES: Jennifer Wallace, Acting Director, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Room 13362, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Derek Orner, Fishery Management Specialist, NMFS Office of Sustainable Fisheries, (301) 427-8567; derek.ornier@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

On October 31, 2019, the Commission found that the Commonwealth of Virginia is out of compliance with the Commission's Interstate Fishery Management Plan (Plan) for Atlantic menhaden. Specifically, the Commission required Virginia to implement a total allowable harvest from the Chesapeake Bay Reduction Fishery that would not exceed 51,000 metric tons (mt). Amendment 3 was approved in the fall 2017, and was to be fully implemented by the Commonwealth of Virginia for the 2018 fishing season. Virginia, however, did not implement the Commission's recommended 51,000 mt cap and instead maintained its pre-existing 87,216 mt cap. At the time, Atlantic menhaden in Virginia were managed by the legislature and not the Virginia Marine Resources Commission, which manages all other Virginia fishery species. The Virginia delegation to the Commission agreed it was out of compliance and voted for a non-compliance finding at the Commission's Atlantic Menhaden and Policy Boards as well as the Commission's Business Section. The Commission forwarded its findings of their October 31, 2019 vote in a formal non-compliance referral letter that was received by NMFS on November 18, 2019. On December 17, 2019, NMFS notified the Commonwealth of Virginia and the Commission of its determination that Virginia failed to carry out its responsibilities under the Commission's Atlantic Menhaden Plan and that the measures Virginia had failed to implement and enforce are necessary for the conservation of the menhaden resource. In this determination and notification, NMFS detailed the actions necessary to avoid the implementation of a Federal moratorium for menhaden in Virginia waters. Details of this determination were provided in a **Federal Register** notice published on December 27, 2019 (84 FR 71329), and are not repeated here.

Activities Pursuant to the Atlantic Coastal Act

The Atlantic Coastal Act specifies that, if, after a moratorium is declared with respect to a State, the Secretary is notified by the Commission that it is withdrawing the determination of noncompliance, the Secretary shall immediately determine whether the State is in compliance with the applicable Plan. If the Secretary determines that the State is in compliance, then the moratorium shall be withdrawn. On May 12, 2020, NMFS received a letter from the Commission that Virginia had taken corrective action to comply with the Atlantic Menhaden Plan, and that the Commission has withdrawn its determination of non-compliance.

Withdrawal of the Moratorium

Based on the Commission's May 12, 2020, letter, as well as information received from the Commonwealth of Virginia, and NMFS' review of Virginia's revised Atlantic menhaden regulations, NMFS concurs with the Commission's determination that Virginia is now in compliance with the Atlantic Menhaden Plan. Specifically, NMFS reviewed the Commission's Menhaden Plan and Virginia's recently approved management measures. The management measures implement a program that is consistent with the Atlantic menhaden management program set by the Commission to conserve menhaden in Chesapeake Bay and achieve the objectives specified in the Plan. Therefore, we concur with the Commission's finding that Virginia is now in compliance and that the moratorium on fishing for, possession of, and landing of Atlantic menhaden by the recreational and commercial fishermen within Virginia waters is no

longer necessary to conserve the fishery. The moratorium, which was scheduled for June 17, 2020, is withdrawn.

Authority: 16 U.S.C. 5101 *et seq.*

Dated: June 1, 2020.

Jennifer M. Wallace,

Acting Director,

Office of Sustainable Fisheries,

National Marine Fisheries Service.

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